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10 *Jane Balao, Christopher Shields,*
and Rosemarie McCrary

11

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 BONNIE LOPEZ, individually as sister
15 and Special Administrator for the Estate of
MELODY MORGAN, deceased; COLLEEN
16 LACKEY, individually as mother of
MELODY MORGAN, deceased,

17 Plaintiffs,

18 vs.

19 THE STATE OF NEVADA ex rel.
NEVADA DEPARTMENT OF
20 CORRECTIONS, WARDEN DWIGHT
NEVEN, individually; GARY PICCININI,
ASSISTANT WARDEN, individually;
21 BRYAN SHIELDS, individually; OFFICER
JOEL TYNNING, individually; OFFICER
KARISSA CURIER; OFFICER JAZMINA
22 FLANAGAN; NURSE JANE BALAO;
NURSE BRIGIDO BAYAWA; NURSE
23 LEILANI FLORES; NURSE ROSEMARY
MCCRARY; NURSE MA LITA
24 SASTRILLO; NURSE CHRIS SHIELDS;
DOES I through X; and ROE ENTITIES I
25 through X, inclusive,

Case No. 2:21-cv-01161-JAD-BNW

26

27 **DEFENDANTS' ANSWER TO FIRST
AMENDED COMPLAINT**

28

Defendants.

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1 Defendants Gary Piccinini, Bryan Shields, Dwight Neven, Joel Tyning, Nevada
2 Department of Corrections (“NDOC”), Jane Balao, Christopher Shields, and Rosemarie
3 McCrary (collectively Defendants”), by and through counsel, answer Plaintiffs’ First
4 Amended Complaint (“FAC”) as follows:

5 **I.**

6 **INTRODUCTION**

7 1. Paragraph 1 alleges only legal conclusions and no facts that require a
8 response. To the extent a response is required, Defendants deny the allegations.

9 **II.**

10 **JURISDICTION AND VENUE**

11 2. Paragraph 2 alleges legal conclusions and no facts that require a response. To
12 the extent a response is required, Defendants deny the allegations.

13 3. Paragraph 3 alleges legal conclusions and no facts that require a response.

14 4. Defendants deny the allegations made in paragraph 4.

15 5. Paragraph 5 alleges legal conclusions which do not warrant a response.

16 6. Paragraph 6 contains a jury demand, which does not warrant a response.

17 **III.**

18 **THE PARTIES**

19 7. As to the first two sentences of paragraph 7, defendants NDOC, Neven, Bryan
20 Shields, Piccinini, and Tyning admit that Bonnie Lopez is Melody Morgan’s sister but lack
21 knowledge or information sufficient to form a belief as to the truth of the remaining
22 allegations made in this paragraph and therefore deny them. Defendants Jane Balao,
23 Christopher Shields, and Rosemarie McCrary lack knowledge or information sufficient to
24 form a belief as to the truth of the allegations made in those sentences and therefore deny
25 them. The last sentence of paragraph 7 contains legal conclusions, which require no
26 response. To the extent a response is required, Defendants deny the allegations made
27 therein.

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1 8. As to the first two sentences of paragraph 8, defendants NDOC, Neven, Bryan
2 Shields, Piccinini, and Tyning admit that Colleen Lackey (Lackey) is Melody Morgan's
3 mother but lack knowledge or information sufficient to form a belief as to the truth of the
4 remaining allegations made therein and therefore deny them. Defendants Jane Balao,
5 Christopher Shields, and Rosemarie McCrary lack knowledge or information sufficient to
6 form a belief as to the truth of the allegations made in the first two sentences of paragraph
7 8 and therefore deny them. The last sentence of paragraph 8 of the FAC states legal
8 conclusions, which require no response. To the extent a response is required, Defendants
9 deny the allegations made therein.

10 9. As to paragraph 9, Defendants admit that Gary Piccinini was the Associate
11 Warden at Florence McClure Women's Correctional Center (FMWCC) and is a Nevada
12 resident and deny the remainder of the allegations made in that paragraph.

13 10. As to paragraph 10, Defendants admit that Dwight Neven was warden of
14 FMWCC and is a Nevada resident and deny the remainder of the allegations made in that
15 paragraph.

16 11. As to paragraph 11, Defendants admit that Bryan Shields is and was at all
17 relevant times employed by NDOC and is a resident of Nevada.

18 12. As to paragraph 12, Defendants admit that Joel Tyning was employed by
19 NDOC and is a Nevada resident, and deny the remainder of the allegations made therein.

20 13. Defendants admit the allegations of paragraph 13.

21 14. As to paragraph 14, Defendants admit that Jazmina Flanigan was employed
22 by NDOC and is a Nevada resident, and deny the remainder of the allegations made
23 therein.

24 15. Defendants admit the allegations made in paragraph 15.

25 16. Defendants admit the allegations made in paragraph 16.

26 17. Defendants admit the allegations made in paragraph 17.

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1 18. As to paragraph 18, Defendants admit that Rosemarie McCrary was employed
2 by NDOC and is a Nevada resident, and deny the remainder of the allegations made
3 therein.

4 19. Defendants admit the allegations made in paragraph 19.

5 20. Defendants admit the allegations made in paragraph 20.

6 21. Paragraph 21 states no facts against Defendants that require a response.

7 22. Defendants admit the allegations made in paragraph 22.

8 23. Paragraph 23 contains vague legal allegations and conclusions in the
9 alternative that do not warrant a response. To the extent any of the allegations made in
10 paragraph 23 require a response, Defendants deny them.

11 24. Defendants deny the allegations made in paragraph 24 of the FAC.

12 25. Paragraph 25 contains vague legal conclusions in the alternative that do not
13 warrant a response. To the extent these legal allegations require a response, they are
14 denied. Defendants admit only that the individual Defendants were employees of NDOC.

15 26. Paragraph 26 contains only vague legal conclusions which do not require a
16 response. To the extent a response is required, Defendants deny each allegation made
17 therein.

18 27. Paragraph 27 states no facts requiring a response.

19 **IV.**

20 **FACTUAL ALLEGATIONS**

21 28. As to paragraph 28, Defendants admit that Melody Morgan was born on
22 March 24, 1993 in California and moved to Las Vegas, Nevada. Defendants lack knowledge
23 or information sufficient to form a belief about the truth of the remaining allegations made
24 in paragraph 28 and therefore deny them.

25 29. Defendants lack knowledge or information sufficient to form a belief about the
26 truth of the allegations made in paragraph 29 and therefore deny each of them.

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1 30. As to paragraph 30, Defendants admit Morgan received Social Security
2 benefits. Defendants lack knowledge or information sufficient to form a belief about the
3 truth of the remaining allegations made in this paragraph and therefore deny them.

4 31. As to paragraph 31, Defendants lack knowledge or information sufficient to
5 form a belief about the truth of the allegations made in this paragraph and therefore deny
6 each of them.

7 32. Defendants lack knowledge or information sufficient to form a belief about the
8 truth of the allegations made in paragraph 32 of the FAC and therefore deny each of them.

9 33. As to paragraph 33, Defendants admit Morgan was arrested in November of
10 2012 for three category B felonies.

11 34. Defendants lack knowledge or information sufficient to form a belief about the
12 truth of the allegations made in paragraph 34 and therefore deny each of them.

13 35. Defendants lack knowledge or information sufficient to form a belief about the
14 truth of the allegations made in paragraph 35 and therefore deny each of them.

15 36. As to paragraph 36, Defendants admit that Melody Morgan entered a guilty
16 plea on three category B felonies in December 2013, that she was sentenced to several years
17 of prison, and that she was incarcerated within NDOC at FMWCC.

18 37. Defendants deny the allegations made in paragraph 37.

19 38. As to paragraph 38, Defendants admit that Melody Morgan was transferred
20 to the Jean Conservation Camp (“JCC”) in or about January of 2018 and deny the
21 remainder of the allegations made in this paragraph.

22 39. As to paragraph 39, Defendants admit that Melody Morgan walked away from
23 JCC on April 18, 2018 with another inmate.

24 40. As to paragraph 40, Bryan Shields admits that on or about April 19, 2018, he
25 contacted Ms. Lackey about locating Melody Morgan; that on or about April 26, 2018 when
26 Morgan was recaptured, Ms. Lackey told him that Melody Morgan had committed suicide
27 in the past and had mental issues; and that she asked him if Morgan could be put on suicide
28 watch. Bryan Shields denies the remainder of the allegations made in paragraph 40. The

1 other answering Defendants lack knowledge or information sufficient to form a belief about
2 the truth of the allegations made in paragraph 40 and therefore deny them.

3 41. As to paragraph 41, Bryan Shields admits that on April 26, 2018, he told Ms.
4 Lackey that he would inform the institution about Morgan's mental health issues and
5 request that she be put on suicide watch and denies the remainder of the allegations made
6 in that paragraph. The other answering Defendants lack knowledge or information
7 sufficient to form a belief about the truth of the allegations made in paragraph 41 and
8 therefore deny each of them.

9 42. As to paragraph 42, Bryan Shields admits the allegations made in the first
10 sentence of that paragraph. As to the second sentence of paragraph 42, Bryan Shields
11 admits that Ms. Lackey told him she did not want Morgan to know that she had assisted
12 in locating her and denies the remainder of the allegations made therein. The other
13 answering Defendants lack knowledge or information sufficient to form a belief about the
14 truth of the allegations made in paragraph 42 and therefore deny each of them.

15 43. Defendants lack knowledge or information sufficient to form a belief about the
16 truth of the allegations made in paragraph 43 and therefore deny them.

17 44. As to paragraph 44, Bryan Shields admits that on April 26, 2018, Ms. Lackey
18 told him where Melody Morgan was at that time. The other answering Defendants lack
19 knowledge or information sufficient to form a belief about the truth of the allegations made
20 in paragraph 42 and therefore deny each of them

21 45. As to paragraph 45, Defendants admit that Morgan was located and arrested
22 on April 26, 2018 and deny the remainder of the allegations made therein.

23 46. Defendants lack knowledge or information sufficient to form a belief about the
24 truth of the allegations made in paragraph 46 and therefore deny them.

25 47. As to paragraph 47, Bryan Shields admits that on April 26, 2018, when
26 Morgan was recaptured, Ms. Lackey told him that Melody Morgan had committed suicide
27 in the past and had mental issues; that she asked him if she could be put on suicide watch;
28 and that he told Ms. Lackey that he would inform the institution about Morgan's mental

1 health issues and request that she be put on suicide watch. Bryan Shields denies the
2 remainder of the allegations made in this paragraph. The other answering Defendants
3 lack knowledge or information sufficient to form a belief about the truth of the allegations
4 made in paragraph 47 and therefore deny them.

5 48. As to paragraph 48, Bryan Shields admits that he called Karissa Currier and
6 told her that Ms. Lackey had said that Melody Morgan was suicidal in the past and asked
7 Ms. Currier if Morgan could be put on suicide watch and denies the remainder of the
8 allegations made in that paragraph. The other answering Defendants lack knowledge or
9 information sufficient to form a belief about the truth of the allegations made in paragraph
10 48 and therefore deny them.

11 49. As to paragraph 49, Defendants admit that Karissa Currier testified during
12 her deposition that she called and spoke to Jazmina Flanigan after speaking with Bryan
13 Shields, but Defendants lack knowledge or information sufficient to form a belief about the
14 truth of the remaining allegations made in paragraph 49 and therefore deny them.

15 50. As to paragraph 50, Defendants admit that Jazmina Flanigan testified during
16 her deposition that Karissa Currier did not call her about Melody Morgan being at risk of
17 committing suicide but Defendants lack knowledge or information sufficient to form a belief
18 about the truth of the remaining allegations made in paragraph 50 and therefore deny
19 them.

20 51. As to paragraph 51, Defendants admit that on April 26, 2018, Melody Morgan
21 was transported to FMWCC.

22 52. Defendants Bryan Shields, Neven, and Piccinini deny the allegations made in
23 paragraph 52 to the extent they pertain to them and are without knowledge or information
24 sufficient to form a belief about the truth of the allegations made against other defendants
25 in paragraph 52 and therefore deny them. Paragraph 52 makes no allegations against the
26 remaining answering Defendants and therefore requires no response by them; to the extent
27 a response is required, they lack knowledge or information sufficient to form a belief about
28 the truth of the remaining allegations made in paragraph 52 and therefore deny them.

1 53. As to paragraph 53, Defendants are without knowledge or information
2 sufficient to form a belief about the truth of the allegations made therein and therefore
3 deny them.

4 54. Paragraph 54 alleges conduct by individuals other than Defendants and
5 contains legal conclusions and opinions that do not require a response. To the extent a
6 response is required, Defendants are without knowledge or information sufficient to form
7 a belief about the truth of the allegations made in paragraph 54 and therefore deny the
8 allegations made therein, as well as those allegations and opinions made in the alleged
9 "Affidavit of Merit" by Kimberly M. Pearson to which paragraph 54 refers.

10 55. As to Paragraph 55, Defendants are without knowledge or information
11 sufficient to form a belief about the truth of the allegations made therein and therefore
12 deny them.

13 56. As to Paragraph 56, Defendants admit that Melody Morgan was found
14 unresponsive in her cell on April 28, 2018 and deny the remainder of the allegations made
15 in this paragraph.

16 57. Paragraph 57 contains legal conclusions that do not require a response. To
17 the extent a response is required, Defendants deny the allegations made in this paragraph.

18 58. As to paragraph 58, Defendants admit that Morgan was found with a bedsheet
19 around her neck and are without knowledge or information sufficient to form a belief about
20 the truth of the remaining allegations made therein and therefore deny them.

21 59. As to paragraph 59, defendants Christopher Shields, Jane Balao, and
22 Rosemarie McCrary admit that an emergency response with life-saving measures was
23 initiated; that nursing staff cut the bed sheet with nurses bandage scissors and lowered
24 Melody Morgan to the floor; and that they and medical staff initiated resuscitative efforts,
25 and deny the remainder of the allegations made in that paragraph. The other answering
26 Defendants lack knowledge or information sufficient to form a belief about the truth of the
27 allegations made in paragraph 59 and therefore deny them.

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1 60. As to paragraph 60, defendants Christopher Shields, Jane Balao, and
2 Rosemarie McCrary admit that CPR compressions and AED (automatic external
3 defibrillator) were administrated, deny that the measures were ineffective, and deny the
4 remainder of the allegations made in that paragraph. The other answering Defendants
5 lack knowledge or information sufficient to form a belief about the truth of the allegations
6 made in paragraph 60 and therefore deny them.

7 61. Defendants admit the first sentence of paragraph 61 but lack knowledge or
8 information sufficient to form a belief about the truth of the remaining allegations made in
9 paragraph 61 and therefore deny them.

10 62. As to paragraph 62, Defendants admit that life-saving efforts at UMC failed,
11 and that Morgan was pronounced dead on April 28, 2018.

12 63. Defendant Piccinini denies the allegations made in paragraph 63. The other
13 answering Defendants lack knowledge or information sufficient to form a belief about the
14 truth of the allegations made in paragraph 63 and therefore deny them.

15 64. Paragraph 64 contains vague legal conclusions and conclusory allegations
16 which do not warrant a response. To the extent a response is required, Defendants deny
17 the conclusions and allegations of this paragraph.

18 65. Paragraph 65 contains legal conclusions and conclusory allegations which do
19 not warrant a response. To the extent a response is required, Defendants deny the
20 conclusions and allegations of this paragraph.

21 66. Paragraph 66 contains legal conclusions and conclusory allegations which do
22 not warrant a response. To the extent a response is required, Defendants deny the
23 conclusions and allegations of this paragraph.

24 67. Paragraph 67 contains legal conclusions and conclusory allegations which do
25 not warrant a response. To the extent a response is required, Defendants deny the
26 conclusions and allegations of this paragraph.

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1 68. Paragraph 68 contains legal conclusions and conclusory allegations in the
2 alternative which do not warrant a response. To the extent a response is required,
3 Defendants deny the conclusions and allegations of this paragraph.

4 69. Paragraph 69 states an incomplete legal conclusion and does not require a
5 response. To the extent a response is required, the allegation is denied.

6 70. Paragraph 70 makes vague legal conclusions that do not require a response.
7 To the extent they do, Defendants deny the allegations.

8 71. Paragraph 71 makes vague legal conclusions and conclusory allegations
9 against all Defendants collectively that do not require a response. To the extent a response
10 is required, Defendants deny each allegation made in paragraph 71.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**42 U.S.C. § 1983 – EIGHTH AMENDMENT – DELIBERATE INDIFFERENCE TO
SERIOUS MEDICAL NEED
PLAINTIFF ESTATE AGAINST ALL DEFENDANTS EXCEPT NDOC**

16 72. As to paragraph 72, Defendants reallege and incorporate their answers from
17 the prior paragraphs as if fully set forth herein.

18 73. Paragraph 73 states generalities and abstract legal conclusions, which do not
19 warrant a response. To the extent the paragraph purports to allege facts, the allegations
20 are denied.

21 74. Paragraph 74 contains a legal conclusion which does not warrant a response.
22 To the extent the paragraph purports to allege facts, the allegations are denied.

23 | 75. Defendants deny the allegations made in paragraph 75.

76. Defendants deny the allegations made in paragraph 76.

25 77. Paragraph 77 contains allegations about Currier and Flanigan as to which
26 Defendants lack knowledge or information sufficient to form a belief about their truth and
27 therefore deny them. To the extent paragraph 77 addresses alleged conduct by Defendants,
28 the allegations are denied.

1 78. Paragraph 78 contains conclusory legal allegations which do not warrant a
2 response; to the extent the paragraph makes any factual allegations, they are denied.

3 79. Defendants deny the allegations made against them in paragraph 79.

4 80. Defendants deny the allegations made in paragraph 80.

5 81. Defendants deny the allegations made against them in paragraph 81.

6 82. Defendants deny the allegations made against them in paragraph 82.

7 83. Defendants Balao, Christopher Shields, and McCrary deny the allegations
8 made against them in paragraph 83, which are conclusory and fail to identify which of the
9 six “Nursing Defendants” allegedly did what. The other answering Defendants lack
10 knowledge or information sufficient to form a belief about the truth of the allegations made
11 in paragraph 83 and therefore deny them. Defendants are without knowledge or
12 information to form a belief as to the truth of the allegations pertaining to the other
13 unidentified “Nursing Defendants” in paragraph 83 and therefore deny them.

14 84. Defendants deny the allegations made in paragraph 84.

15 85. Paragraph 85 states legal conclusions which do not warrant a response; to the
16 extent the paragraph purports to attribute any alleged conduct to the Defendants, the
17 allegations are denied.

18 86. Defendants Tyning, Balayo, Christopher Shields, and McCrary deny each of
19 the allegations made in paragraph 86 to the extent they pertain to them. As to allegations
20 pertaining to Currier and other Nursing Defendants, Tyning, Balayo, Christopher Shields,
21 and McCrary lack knowledge or information sufficient to form a belief as to their truth and
22 therefore deny them. The other answering Defendants lack knowledge or information
23 sufficient to form a belief about the truth of the allegations made in paragraph 86 and
24 therefore deny them.

25 87. The first sentence of paragraph 87 makes no allegations against Defendants
26 and the second contains legal conclusions which do not warrant a response. To the extent
27 the allegations of paragraph 87 purport to attribute any alleged conduct to Defendants, the
28 allegations are denied.

88. Paragraph 88 makes conclusory allegations in the alternative against Tyning and unidentified Nursing Defendants which cannot be fairly answered and therefore defendants Tyning, Balao, Christopher Shields, and McCrary deny the allegations made in paragraph 88. The other answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations made in paragraph 88 and therefore deny them.

89. Defendants deny the allegations made against them in paragraph 89.

90. Defendants deny the allegations made against them in paragraph 90.

91. Defendants deny the allegations made against them in paragraph 91.

SECOND CAUSE OF ACTION

**LOSS OF FAMILIAL ASSOCIATION 42 U.S.C. § 1983 – FOURTEENTH
AMENDMENT – SUBSTANTIVE DUE PROCESS
PLAINTIFF LACKEY AGAINST ALL DEFENDANTS EXCEPT DEFENDANT
NDOC**

92. As to paragraph 92, Defendants reallege and incorporate their answers to the prior paragraphs as if fully set forth herein.

93. Defendants NDOC, Neven, Bryan Shields, Piccinini, and Tyning admit the allegation made in paragraph 93. The other answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation and therefore deny it.

94. Paragraph 94 states a legal conclusion which does not warrant a response. To the extent a response is required, Defendants deny the allegations.

95. Defendants deny the allegations made against them in paragraph 95.

96. Defendants deny the allegations made against them in paragraph 96.

97. Defendants deny the allegations made against them in paragraph 97.

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1 **THIRD CAUSE OF ACTION**
2 **NEGLIGENCE**
3 **AGAINST ALL DEFENDANTS**

4 98. As to paragraph 98, Defendants reallege and incorporate their answers to the
5 prior paragraphs as if fully set forth herein.

6 99. Defendants deny the allegations made against them in paragraph 99.

7 100. Defendants Balao, McCrary, and Chris Shields deny the allegations made
8 against them in paragraph 100. The other answering Defendants lack knowledge or
9 information sufficient to form a belief as to the truth of the conclusory allegations made in
10 paragraph 100 and therefore deny them.

11 101. Defendants deny the allegations made against them in paragraph 101.

12 102. Defendants deny the allegations made against them in paragraph 102.

13 103. Defendants deny the allegations made against them in paragraph 103.

14 **FOURTH CAUSE OF ACTION**
15 **WRONGFUL DEATH**
16 **AGAINST ALL DEFENDANTS**

17 104. As to paragraph 104, Defendants reallege and incorporate all their answers
18 to the prior paragraphs as if fully set forth herein.

19 105. Paragraph 105 states a legal conclusion which does not warrant a response;
20 to the extent the paragraph purports to allege conduct against the Defendants, the
21 allegations are denied.

22 106. Defendants deny the allegations made against them in paragraph 106.

23 107. Defendants deny the allegations made against them in paragraph 107.

24 108. Defendants deny the allegations made against them in paragraph 108.

25 109. Defendants deny the allegations made against them in paragraph 109.

26 110. Defendants deny the allegations made against them in paragraph 110.

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1 **FIFTH CAUSE OF ACTION**

2 **GROSS NEGLIGENCE**
3 **AGAINST ALL DEFENDANTS**

4 111. As to paragraph 111, Defendants reallege their answers to the prior
5 paragraphs as if fully set forth herein.

6 112. Paragraph 112 states a legal conclusion which does not warrant a response;
7 to the extent the paragraph purports to allege conduct against Defendants, the allegations
8 are denied.

9 113. Defendants deny the allegations made against them in paragraph 113.

10 114. Defendants deny the allegations made against them in paragraph 114.

11 115. Defendants deny the allegations made against them in paragraph 115.

12 116. Defendants deny the allegations made against them in paragraph 116.

13 **SIXTH CAUSE OF ACTION**

14 **NEGLECT OF VULNERABLE PERSON**
15 **AGAINST ALL DEFENDANTS**

16 117. As to paragraph 117, Defendants reallege and incorporate their answers to
17 the prior paragraphs as if fully set forth herein.

18 118. Paragraph 118 contains a legal conclusion that requires no response. To the
19 extent Plaintiffs purport to allege any conduct, Defendants deny the allegations made
20 against them.

21 119. Paragraph 119 contains legal conclusions that require no response. To the
22 extent a response is required, Defendants deny the allegations.

23 120. Paragraph 120 contains a legal conclusion that requires no response. To the
24 extent a response is required, Defendants deny the allegations made in this paragraph.

25 121. Defendants deny the allegations made against them in paragraph 121.

26 122. Defendants deny the allegations in paragraph 122.

27 123. Defendants deny the allegations in paragraph 123.

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SEVENTH CAUSE OF ACTION

NEGLIGENCE, TRAINING, SUPERVISORY AGAINST DEFENDANTS NDOC AND NURSES FLORES, AND SASTRILLO

124. As to paragraph 124, Defendants reallege and incorporate their answers to the prior paragraphs as if fully set forth herein.

125. Paragraph 125 contains legal conclusions that require no response. To the extent Plaintiffs purport to allege any conduct by NDOC, NDOC denies the allegations.

126. Paragraph 126 contains conclusory allegations about unidentified individuals that cannot fairly be answered, and therefore NDOC denies each allegation made therein.

127. Paragraph 127 contains conclusory allegations about unidentified individuals that cannot fairly be answered, and therefore NDOC denies each allegation made therein.

128. NDOC denies the allegations made in paragraph 128.

129. NDOC denies the allegations made in paragraph 129.

130. NDOC lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 130 and therefore denies them.

131. NDOC lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 131 and therefore denies them.

132. NDOC denies the allegations made in paragraph 132.

133. NDOC denies the allegations made in paragraph 133.

EIGHTH CAUSE OF ACTION

PROFESSIONAL NEGLIGENCE AGAINST DEFENDANT NURSING DEFENDANTS

134. As to paragraph 134, Defendants reallege and incorporate their answers to the prior paragraphs as if fully set forth herein.

135. Paragraph 135 states legal conclusions that do not warrant a response. To the extent any response is required, Balao, McCrary, and Christopher Shields deny the allegations made against them. To the extent paragraph 135 makes allegations against
...
...

1 other Nursing Defendants, Balao, McCrary, and Chris Shields lack knowledge or
2 information sufficient to form a belief as to their truth and therefore deny them.

3 136. Paragraph 136 states a legal conclusion which does not warrant a response;
4 to the extent the paragraph makes a factual assertion, the allegation is denied.

5 137. Defendants Balao, McCrary, and Chris Shields deny the allegations made
6 against them in paragraph 137. To the extent paragraph 137 makes allegations against
7 other Nursing Defendants, Balao, McCrary, and Chris Shields lack knowledge or
8 information sufficient to form a belief as to their truth and therefore deny them.

9 138. Defendants Balao, McCrary, and Chris Shields deny the allegations made
10 against them in paragraph 138. To the extent paragraph 138 makes allegations against
11 other Nursing Defendants, Balao, McCrary, and Chris Shields lack knowledge or
12 information sufficient to form a belief as to their truth and therefore deny them.

13 139. Defendants Balao, McCrary, and Chris Shields deny the allegations made
14 against them in paragraph 139 and Exhibit 1 to the FAC. To the extent paragraph 139 or
15 Exhibit 1 to the FAC make allegations against other Nursing Defendants, Balao, McCrary,
16 and Chris Shields lack knowledge or information sufficient to form a belief as to their truth
17 and therefore deny them.

18 140. Defendants Balao, McCrary, and Chris Shields deny the allegations made
19 against them in paragraph 140. To the extent paragraph 140 makes allegations against
20 other Nursing Defendants, Balao, McCrary, and Chris Shields lack knowledge or
21 information sufficient to form a belief as to their truth and therefore deny them.

22 141. Defendants Balao, McCrary, and Chris Shields deny the allegations made
23 against them in paragraph 141. To the extent paragraph 141 makes allegations against
24 other Nursing Defendants, Balao, McCrary, and Chris Shields lack knowledge or
25 information sufficient to form a belief as to their truth and therefore deny them.

26 142. Defendants Balao, McCrary, and Chris Shields deny all allegations made
27 against them in paragraph 142, including Plaintiffs' alleged damages. To the extent
28 paragraph 142 makes allegations against other Nursing Defendants, Balao, McCrary, and

1 Chris Shields lack knowledge or information sufficient to form a belief as to their truth and
2 therefore deny them.

3 143. Defendants Balao, McCrary, and Chris Shields deny all allegations made
4 against them in paragraph 143, including Plaintiffs' alleged damages. To the extent
5 paragraph 143 makes allegations against other Nursing Defendants, Balao, McCrary, and
6 Chris Shields lack knowledge or information sufficient to form a belief as to their truth and
7 therefore deny them.

8 || 144. Defendants deny the allegations made in paragraph 144.

9 145. As to Plaintiffs' prayer for relief, Defendants deny they are liable for punitive
10 damages or any other forms of alleged damages, fees, interest, or costs, and deny Plaintiffs'
11 prayer for relief and each allegation made therein in its entirety.

146. Defendants deny every allegation and alleged opinion in Exhibit 1 to the FAC.

13 147. Defendants deny each allegation in the FAC and Exhibit 1 thereto that they
14 did not specifically admit.

148. Defendants reserve the right to amend this answer as necessary to conform to
the evidence discovered after this answer is filed.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

19 The FAC fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants were not personally involved in the cause in fact and/or the proximate cause of the alleged constitutional deprivations.

THIRD AFFIRMATIVE DEFENSE

24 Plaintiffs' claims are time-barred by applicable statutes of limitations.

FOURTH AFFIRMATIVE DEFENSE

Defendants at all relevant times acted in good faith toward Plaintiffs. Therefore, Defendants are entitled to qualified good faith immunity from damages.

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1 **FIFTH AFFIRMATIVE DEFENSE**

2 Defendants are entitled to qualified and absolute immunity.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 Defendants are entitled to sovereign immunity.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 Defendants are entitled to immunity under the Eleventh Amendment.

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 Plaintiffs failed to mitigate their damages, if any, and are therefore barred from
9 seeking any damages hereunder.

10 **NINTH AFFIRMATIVE DEFENSE**

11 Plaintiffs were negligent in their conduct and such negligence is the sole, primary
12 and superseding cause of any damages sustained by them, if any.

13 **TENTH AFFIRMATIVE DEFENSE**

14 Plaintiffs lack standing to bring some or all their claims.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 Defendants are entitled to discretionary immunity from liability because the acts
17 complained of were discretionary in nature or were performed while carrying out a statute
18 or regulation.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 At all relevant times, Defendants held a good faith belief that they were acting
21 reasonably and that their actions were privileged and legally justified.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 Plaintiffs' damages or injuries were caused by fellow servants.

24 **FOURTEENTH AFFIRMATIVE DEFENSE**

25 Plaintiffs' conduct constitutes a waiver of any alleged wrongful conduct undertaken
26 by Defendants.

27 **FIFTEENTH AFFIRMATIVE DEFENSE**

28 Plaintiffs' conduct ratified any alleged wrongful conduct by Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendants are immune from liability as a matter of law.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages are legally and proximately caused solely by Morgan's conduct.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' negligence caused or contributed to any injuries or damages which Plaintiffs may have sustained and requires that Plaintiffs be denied damages or that their damages be diminished in proportion to the amount of negligence attributable to Plaintiffs.

NINETEENTH AFFIRMATIVE DEFENSE

Defendants cannot be sued for monetary damages while acting in their official capacities in a civil action.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs are estopped from pursuing any claims against Defendants in accordance with equitable principles of jurisprudence.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The doctrines of res judicata and/or collateral estoppel bar Plaintiffs from asserting the matters set forth in their FAC and act as a bar to any relief sought by Plaintiffs.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' alleged damages or injuries were legally and proximately caused by third parties and Plaintiffs themselves.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs fail to state a cognizable constitutional claim under the United States Constitution or under the Nevada Constitution and/or NRS 41.031 or 41.0322.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

At all relevant times, Defendants acted in accordance with applicable law and prison procedures that are constitutionally required.

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1 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

2 Plaintiffs' professional negligence claim against Jane Balao, Christopher Shields,
3 and Rosemarie McCrary fails under NRS 41A.071 and is void ab initio.

4 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

5 Plaintiffs' claims against Jane Balao, Christopher Shields, and Rosemarie McCrary
6 are barred by laches.

7 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

8 Plaintiffs' claims fail because Defendants were not deliberately indifferent.

9 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

10 Plaintiffs' claims against Jane Balao, Christopher Shields, and Rosemarie McCrary
11 fail because they did not proximately cause Plaintiffs' alleged injuries or damages.

12 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

13 Plaintiffs allege no conduct against Defendants for which punitive or exemplary
14 damages could or should be awarded and lack evidence to support punitive damages
15 against any Defendant pursuant to the applicable standards of proof.

16 **THIRTIETH AFFIRMATIVE DEFENSE**

17 Permitting punitive damages would violate the Defendants' rights secured by the
18 United States Constitution and Nevada Constitution and any punitive damages award is
19 barred by federal and state statutes, including NRS 41.035.

20 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

21 Plaintiffs are not entitled to punitive damages because no act or omission of the
22 Defendants was fraudulent, oppressive, malicious, willful, wanton, with reckless disregard
23 for the safety of others, or with an evil mind.

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

25 Plaintiffs' alleged damages are capped under NRS 41.035.

26 Defendants reserve the right to amend this answer to allege additional affirmative
27 defenses if so warranted.

28 ...

WHEREFORE, Defendants pray for relief as follows:

1. That Plaintiffs take nothing by virtue of their FAC.
 2. That Plaintiffs' claims against Defendants be dismissed with prejudice.
 3. For attorney fees and costs of suit herein.
 4. For such other relief that the Court deems appropriate.

DATED this 12th day of July, 2021.

AARON D. FORD
Attorney General

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